(5)

Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

M. A. No. 308 (C) / 2006

APPELLANT : The Oriental Insurance Company Ltd.,
Defendant No.3 Bilaspur, through its Divisional Manager,
Divisional Office, Bilaspur (C.G.).

-Versus –

RESPONDENT : 1. Shri Bhuneshwer Singh, 31 years,
Claimant No.1 S/o Shri Bakshu Singh.

RESPONDENT : 2. Ku. Nameshwari Bai, 9 years,
Claimant No.2 D/o Bhuneshwer Singh.

RESODNENT : 3. Anupa, 7 years,
Claimant No.3 S/o Shri Bhuneshwar Singh.

RESPODNENT : 4. Ku. Manisha, 5 years,
Claimant No.4 D/o Shri Bhuneshwer Singh.

RESPONDENT : 5. Ku. Lalita, 3 years,
Claimant No.5 D/o Shri Bhuneshwer Singh.
Respondents No. 2 to 5 are minor,
Through guardian/ respondent No.1
Bhuneshwer Singh.
All by caste Gond, R/o Village- Naka,
Police Station- Marwahi,
District- Bilaspur (C.G.).

P.R. No. 2365/06
Presented dated 9/8/06

RESPONDENT : 6. Shri Pratap Singh,
Defendant No.1 S/o Shri Jailal Gond,
R/o Dhanora, Police Station- Marwahi,
District- Bilaspur (C.G.).

RESPONDENT : 7. Shri Pooran Singh Marko,
Defendant No.2 S/o Shri Manrakhan Singh,
R/o Silpahri, Police Station- Pendra,
District- Bilaspur (C.G.).

(6)

APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLES ACT, 1988.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(43)

मामला क्रमांक M.A.(C) No. 308 **सन् 2006**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

08-11-2006

Shri Ali Asgar, learned counsel for the appellant.

Heard on admission.

The only point urged by learned counsel for the appellant-Insurance Company in this appeal is that the right of recovery of the compensation awarded by the Claims Tribunal was erroneously granted to the insurer by the learned Motor Accident Claims Tribunal while granting relief in sub para-2 of para-26 of the award since no such question could be agitated by the appellant/insurer in execution proceeding. Learned counsel for the appellant does not dispute that the Insurance Company did not lead any evidence before the Claims Tribunal in support of its pleading that the deceased was travelling in the ill-fated tractor trolley as gratuitous passenger at the time of accident and that the ill-fated tractor trolley was insured by the appellant at the time of accident. It was pointed out that the owner and driver of the ill-fated tractor trolley were *ex-parte* before the Claims Tribunal. The quantum of compensation awarded by the Claims Tribunal was also not disputed by the learned counsel for the appellant.

In view of the above facts and the law that the burden of proving its pleading that the deceased was travelling as gratuitous passenger in the ill-fated tractor trolley at the time of the accident was squarely on the insured, this appeal deserves to be dismissed at the stage of admission being devoid of any merit. So far as the observation by the learned Motor Accident Claims Tribunal in the award passed in sub para-

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(44)

मामला क्रमांक M.A.(C).No.308/ **सन्** 2006

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	2 of Para-26 is concerned, it is wholly contrary to law because right of recovery of compensation from the owner/driver of the tractor trolley in execution proceedings could not be granted to the insurer in the aforesaid circumstances. In view of the above facts and circumstances, sub para-2 of Para-26 of the impugned award is set aside while maintaining the liability of the insurer/appellant to satisfy the award passed by the Claims Tribunal. With the above modification in the award, this appeal being devoid of merit is dismissed at the stage of admission. In view of the above, M.(C.)P.No.1813/2006 for grant of stay, I.A.No.3407/2006 for urgent hearing and I.A.No.3449/2006 for taking documents on record also stand disposed of. *C. C. as per rules.*	Sd/- Dilip Raosaheb Deshmukh Judge